

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
MAY 2, 2000 - 7:00 P.M.**

ROLLCALL Answering rollcall were Members Faust, Hovland, Johnson, Kelly, and Mayor Maetzold.

CONSENT AGENDA ITEMS APPROVED Motion made by Member Johnson and seconded by Member Hovland approving the Council Consent Agenda as presented.

Rollcall:

Ayes: Faust, Hovland, Johnson, Kelly, Maetzold

Motion carried.

***MINUTES OF THE REGULAR MEETINGS OF APRIL 18, 2000, AND BOARD OF REVIEW OF APRIL 18, 2000, APPROVED** Motion made by Member Johnson and seconded by Member Hovland approving the Minutes of the Regular Meetings of April 18, 2000, and Board of Review of April 18, 2000.

Motion carried on rollcall vote - five ayes.

RESOLUTION 2000-52 ADOPTED ORDERING STREET REHABILITATION PROJECT IMPROVEMENT A-189 - SCHOOL ROAD, RUTH DRIVE AND WEST 59th STREET
Affidavits of Notice were presented, approved and ordered placed on file.

Presentation by Engineer

Assistant Engineer Houle reviewed the proposed project. He explained the streets had been constructed in 1956 and have reached the end of their useful life. Mr. Houle said that normal seal coat maintenance had been performed on the street. The streets have numerous small block cracks and a large amount of alligator cracking. When streets in this condition are not rehabilitated, water seeps into the cracks to the sub-grade requiring total reconstruction that is more costly.

Mr. Houle said the proposed improvement would replace the pavement and include some minor curb and gutter replacement. He added that no utility work is necessary in this area. Mr. Houle stated the total project cost was estimated at \$120,000 and included construction, engineering, clerical, and finance charges. The project would be paid for through an area special assessment of the benefited properties on School Road, Ruth Drive, and West 59th Street. The City would pay two area assessments for its water tower property and Edina Schools would pay 24 area assessments for Concord Elementary School. Estimated area assessments would be \$2,300.00 spread over ten years. Mr. Houle reviewed local roadway reconstruction costs from five previous projects that ranged from \$1,850 per lot to \$4,500 per lot. He recommended the Council order the project, take bids June 1, 2000, award the contract June 6, 2000, construct the project during the summer, and hold the special assessment hearing in the fall.

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Public Comment

Steven Merta, 4809 West 59th Street, stated that he was one of three homeowners in attendance from West 59th Street, who feel their street is smooth and pot hole free. They do not want the improvement project ordered. Mr. Merta asked the Council to eliminate West 59th Street from the project. Mr. Houle reiterated that the street contains many large block cracks and alligator cracking. If these are not repaired water will seep into the cracks and damage the sub-grade causing more costly repair in the future. Mr. Merta and his neighbor, Mr. Larson submitted photographs to the Council of West 59th Street. Mayor Maetzold commented that the alligator and block cracks were evident in the pictures.

William Larson, 4805 West 59th Street, agreed with Mr. Merta. Mr. Larson added that a few years ago seal coating was done and he suggested that this be done again. He added that in his opinion West 59th Street was in the same or better condition than many city streets. Mr. Larson agreed that School Road was in need of repair, however, he asked the Council to remove West 59th Street from the project.

Bev Iacono, 4813 West 59th Street, agreed with her neighbors and urged the Council to postpone any work until their road really needs it.

Mayor Maetzold asked staff to comment on the neighbors' objections. Mr. Houle reviewed a pavement performance curve, explaining that if streets are let go too long, the sub grade of the road bed erodes causing a much more costly repair. He added that including West 59th Street and Ruth Drive in the School Road project brings residents of those small streets a less costly rehabilitation than doing either street alone in the future.

Member Johnson said that in his opinion, if the residents did not want their street repaired, then let them wait. Member Kelly agreed with Member Johnson.

Member Hovland stated that he was concerned with maintaining the City's infrastructure. He said that he believed the Council needed to look out for the interests of the City. Member Hovland suggested that keeping Edina streets at a certain standard, adds value to the entire city and helps in maintaining property values overall.

Member Kelly suggested the project be ordered, but it should be bid using an alternate without West 59th Street. Manager Hughes suggested that if West 59th Street were removed, Ruth Drive should also be bid as an alternate.

Member Hovland made a motion to close the public hearing, seconded by Member Johnson.

Ayes: Faust, Hovland, Johnson, Kelly, Maetzold

Motion carried.

Member Kelly introduced the following resolution and moved its adoption:

**RESOLUTION NO. 2000-52
ORDERING STREET REHABILITATION
IMPROVEMENT NO. A-189
SCHOOL ROAD, RUTH DRIVE & WEST 59TH STREET**

WHEREAS, the Edina City Council on the 4th of April, 2000, fixed a date for a Council hearing on the proposed street reconstruction, Improvement No. A-189; and

WHEREAS, ten days' mailed notice and two weeks' published notice of the hearing was given, and the hearing was held thereon on the 2nd day of May, 2000, for Improvement No. A-189 resurfacing School Road from West 60th Street to Concord Avenue, Ruth Drive, and West 59th Street, at which time all persons desiring to be heard were given an opportunity to be heard thereon.

NOW, THEREFORE, BE IT RESOLVED that the Council has duly considered the views of all persons interested, and being fully advised of the pertinent facts, does hereby determine to proceed with the construction of said improvement, including all proceedings which may be necessary in eminent domain for the acquisition of necessary easements and rights hereby designated and shall be referred to in all subsequent proceedings as Improvement Project No. A-189 resurfacing School Road from West 60th Street to Concord Avenue, Ruth Drive, and West 59th Street.

BE IT FURTHER RESOLVED Improvement Project No. A-189 resurfacing School Road from West 60th Street to Concord Avenue, Ruth Drive, and West 59th Street is hereby ordered as proposed, pending further review of the Ruth Drive and West 59th Street portion of the improvement, after bids are received.

BE IT FURTHER RESOLVED that the City Engineer is hereby designated as the engineer for this improvement. The engineer shall cause plans and specifications to be prepared for the making of such improvement.

BE IT FURTHER RESOLVED, that the City Engineer is hereby authorized to advertise for bids and receive same for the aforementioned improvements, noting that alternate bids are to be received showing West 59th Street and Ruth Drive separately from School Road.

Passed and adopted this 2nd day of May, 2000.

Member Hovland seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Johnson, Kelly, Maetzold

Motion carried.

RESOLUTION 2000-53 ADOPTED APPROVING FINAL DEVELOPMENT PLAN FOR FAIRVIEW SOUTHDAL HOSPITAL (6401 FRANCE AVENUE SOUTH) BUILDING EXPANSION AND PARKING RAMP AND RESOLUTION 2000-54 ADOPTED APPROVING A CONDITIONAL USE PERMIT FOR PARKING STRUCTURE Affidavits of Notice were presented, approved and ordered placed on file.

Planner Larsen said that after the April 4, 2000, public hearing Fairview Hospital responded to the concerns raised by the Council by:

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- BRW, Inc. conducted a.m. traffic counts in order to compare them to the p.m. counts used for their original study. The counts demonstrated that p.m. counts were higher than a.m. counts and were appropriate to use for the study.
- Submitted a revised landscaping plan illustrating additional and larger stock than what had been offered in writing at the April 4, 2000, meeting.
- Project architects have done additional work on design and materials for the proposed ramp.
- Two phases for road improvements.
 - ◆ Phase 1 would be a widening of Drew Avenue to accommodate three traffic lanes and a six-foot sidewalk on the west side of the street between 65th and 66th Street. The sidewalk would be pavers to tie into the 66th Street sidewalk. Southdale Medical's owners have agreed to grant the necessary sidewalk easement. Funding for Phase 1 would be 100% through special assessment to the hospital, Southdale Medical, and the medical office building at 6363 France Avenue. The assessment would be allocated on a floor area basis. The estimated project cost is \$155,000.00
 - ◆ Phase 2 would be the reconstruction of West 65th Street west of France Avenue and the reconstruction of the intersection of Valley View Road and West 65th Street. The project would include an expansion of the ramp, addition of signals, reconstruction of the intersection and rehabilitation of the pavement. The West 65th portion of the improvement is not a municipal state aid street so it would be funded by a 100% assessment. This portion of the project is estimated at \$194,000. The remainder of proposed improvements are estimated at \$950,000.00 with approximately \$712,500.00 eligible for state aid funding leaving an additional \$237,500.00 to be assessed. The hospital, Southdale Medical, the medical office building at 6363 France Avenue, and all properties abutting West 65th Street between France Avenue and Valley View Road would be included in the assessment area for this improvement.
- Fairview Southdale Hospital and the owner of the medical office building at 7373 France Avenue have agreed to waive their right of appeal for any special assessment that does not exceed the Engineer's estimate, retaining the right to appeal any portion of an assessment exceeding the same.

Member Johnson asked why only the hospital was used in calculating the floor area, not the parking structure. Mr. Hughes explained that the City views the parking structure as an accessory building to the hospital. For this reason the parking structure was not used in calculating the special assessments the hospital would be responsible for.

Mr. Larsen reviewed the suggested conditions for approval of both the Final Development Plan and the Conditional Use Permit as follows:

Final Development Plan Conditions:

1. Watershed District Permits.
2. Landscaping Plan dated, 4/20/00 and bond.
3. Exterior materials shall be brick, marble and glass matching materials on hospital.

4. Agreement by hospital and the owners of 6363 France Avenue to waive their right of appeal of special assessments for off-site improvements subject to term of the agreement signed by all parties and on file at City Hall.

Conditional Use Permit Conditions:

1. Design and materials detailed on ramp plan as presented May 2, 2000 to City Council.
2. Landscaping Plan dated, 4/20/00 and bond.
3. All lighting in parking structure and on the site containing the structure shall be shaded so as to concentrate illumination on-site and within the structure.
4. No signage on the skyway.

Proponent Presentation

Richard Dahl, BWBR Architects, reviewed the revised plans, using graphics and actual samples of the materials intended for use in the ramp. Mr. Dahl explained the stair tower curtain wall will be clear anodized aluminum and green tinted glazing. The elevator tower will be brick, matching the hospital. This will be covered by a clear anodized aluminum fascia and soffit. The ramp will consist of poured in place concrete walls with sand textured acrylic coating. The wall adjacent to the brick elevator tower and curtain wall will be light taupe with the span of the building a combination of light and dark taupe. The columns will be cast in place concrete painted a dark earth tone. Mr. Dahl also reviewed the proposed landscaping and berm.

Member Faust expressed her disappointment with the design as proposed. She stated she had specifically asked that the parking structure design complement the existing and proposed hospital. Member Faust stated that in her opinion the designers had not done as requested.

Member Hovland and Mayor Maetzold disagreed with Member Faust. They stated that in their opinions and experience the proposed design was a good attempt at blending the new hospital addition and ramp with existing buildings and designs.

Member Kelly stated in his opinion the hospital proposal is an over building of the site and he still would have liked to seen a more comprehensive study of the area before proceeding. However, he believes that the hospital is a good citizen and good for the community.

Member Hovland introduced the following resolution and moved its adoption:

RESOLUTION 2000-53

APPROVING FINAL DEVELOPMENT PLAN

BE IT RESOLVED by the Edina City Council that the Final Development Plan revision dated May 2, 2000, for Fairview Southdale Medical Center, Fairview Health Services, a Minnesota nonprofit corporation, located at 6401 France Avenue presented at the regular meeting of the City Council on May 2, 2000, be and is hereby approved conditioned upon:

1. Watershed District Permits.
2. Landscaping Plan dated, 4/20/00 and bond.
3. Exterior materials shall be brick, marble and glass matching materials on hospital.
4. Agreement by hospital and the owners of 6363 France Avenue to waive their right of appeal of special assessments for off-site improvements subject to terms of the agreement signed by all parties and on file at City Hall.

Member Johnson seconded the motion.

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Rollcall:

Ayes: Hovland, Johnson, Kelly, Maetzold

Nay: Faust

Motion carried.

Member Johnson made a motion introducing the following resolution and moving its adoption:

**RESOLUTION NO. 2000-54
GRANTING CONDITIONAL USE PERMIT
TO FAIRVIEW HEALTH SERVICES
PARKING STRUCTURE**

WHEREAS, the procedural requirements of Code Section 850 (the Zoning Ordinance) have been met; and

WHEREAS, it has been determined that the Findings as required by Code Section No. 850.04 Subd. 4 have been satisfied:

NOW, THEREFORE, BE IT RESOLVED that the Edina City Council hereby grants a Conditional Use Permit to Fairview Health Services conditioned upon the following:

- 1. Design and materials detailed on ramp plan as presented May 2, 2000 to City Council.**
- 2. Landscaping Plan dated, 4/20/00 and bond.**
- 3. All lighting in parking structure and on the site containing the structure shall be shaded so as to concentrate illumination on-site and within the structure.**
- 4. No signage on the skyway.**

Passed and adopted this 2nd day of May, 2000.

Member Hovland seconded the motion.

Rollcall:

Ayes: Hovland, Johnson, Kelly, Maetzold

Nay: Faust

Motion carried.

***PRELIMINARY REZONING AND OVERALL DEVELOPMENT PLAN - OPUS/CLARK, GRANDVIEW SQUARE CONTINUED TO MAY 16, 2000** Motion made by Member Johnson and seconded by Member Hovland continuing Preliminary Rezoning and Overall Development Plan for Grandview Square, Ron Clark/Opus Development until May 16, 2000.

Motion carried on rollcall vote - five ayes.

Mayor Maetzold excused himself from the remainder of the meeting at 8:05 P.M.

ACTION TABLED UNTIL MAY 16, 2000, ON ORDINANCE NO 2000-05 - AMENDING SECTION 450 - SWIMMING POOLS Sanitarian Velde explained the reason for the proposed ordinance amendment was to bring Edina's code into compliance with state statute. The amendment would address three items in the Swimming Pool Code: spa pool deck elevations, access barriers, and chlorine concentration.

Mr. Velde stated the first section would allow the required deck to be lower than the top rim of a spa pool. Spa pools are typical 30 to 34 inches in height and no larger than 100 square feet in area. Mr. Velde said staff believed this relation would not interfere with live saving efforts. The

second section would allow homeowners who have spa pools to use a rated safety cover instead of fencing to prevent toddlers from accessing the pool. Under the present Code, the homeowner would be required to fence the spa pool area. An ASTM rated safety cover is acceptable by the Uniform Building Code as barrier. The third section of the amendment increases maximum allowable chlorine residual from 3.0 ppm to 5.0 ppm. This is consistent with the state swimming pool code and the industry standard.

Mayor Pro tem Kelly asked if ASTM standards require pool covers to lock. Mr. Velde answered he did not believe the standard required the covers lock. Mayor Pro tem Kelly expressed concern that a young child might be able to get under a spa or pool cover that was not locked, but not be able to get out. He requested further research into the possibility of requiring a lock on a spa cover if no fence were installed. **Member Hovland made a motion, seconded by Member Johnson tabling action on the proposed ordinance amendment until May 16, 2000, allowing staff time to research lockable spa covers.**

Ayes: Faust, Hovland, Johnson, Kelly

Motion carried.

***AWARD OF BID FOR YEAR 2000 SANITARY SEWER IMPROVEMENT - CONTRACT 00-1 CONTINUED TO MAY 18, 2000** Motion made by Member Johnson and seconded by Member Hovland to continue the award of bid for year 2000 sanitary sewer improvement, Contract No. 00-1 to May 18, 2000.

Motion carried on rollcall vote - five ayes.

***BID AWARDED FOR COUNTRY CLUB AREA STORM SEWER STS-253, CONTRACT 00-6** Motion made by Member Johnson and seconded by Member Hovland for award of bid for Country Club Area Storm Sewer Improvement STS-253, Contract No. 00-06 (Engineering) to recommended low bidder, Northdale Construction at \$636,303.72.

Motion carried on rollcall vote - five ayes.

***BID AWARDED FOR PUBLIC WORKS EMULSIFIED ASPHALT - CRS2** Motion made by Member Johnson and seconded by Member Hovland for award of bid for the annual purchase (April 1, 2000 to April 1, 2001) of emulsified asphalt - CRS2, to recommended low bidder, Marathon Ashland Petroleum at \$.7600 per gallon delivered.

Motion carried on rollcall vote - five ayes.

***BID AWARDED FOR AQUATIC VEGETATION CONTROL** Motion made by Member Johnson and seconded by Member Hovland for award of bid for aquatic vegetation control on 38 ponds to recommended low bidder, Lake Management, Inc., at \$17,535.00.

Motion carried on rollcall vote - five ayes.

LICENSEE WITHDREW APPEAL OF ADMINISTRATIVE PENALTY CASE NO. 00-005031 - DANIEL'S ITALIAN RESTAURANT Manager Hughes informed the Council that Daniel's Italian Restaurant had withdrawn their previous appeal of their administrative penalty on Tuesday afternoon. No action taken.

APPEALS OF ADMINISTRATIVE PENALTY CASE NO. 00-005039 - EDEN AVENUE GRILL AND CASE NO. 00-005040 - TWO GUYS FROM ITALY Mr. Hughes suggested that the

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Council hear and discuss the two appeal cases concurrently. Chief Siitari briefly reviewed the City's administrative penalty matrix adopted last year, when the intoxicating liquor ordinance was enacted. He explained that the Council directed and staff has supported strict enforcement of the code. Mr. Siitari stated that approximately every three months the Police Department conducted undercover liquor investigations. He said that an under age person paired with one or two officers attempt to be served liquor in licensed establishments throughout the city. The undercover group enters an establishment and orders drinks. The decoy carries their actual identification and if asked shows the server. If the drinks are served the officers show their badges and inform the staff and manager that they have served a minor. If the minor is served, the establishment receives an administrative penalty citation. Mr. Siitari reported that when the first under cover investigation was conducted only 41% of the licensed establishments complied with the law. However, in the fall and during this last investigation compliance had increased to 76%.

Member Faust asked if the employees are charged criminally. Sgt. Larson replied that the employee actually serving the minor is charged with a gross misdemeanor. He reported that in his experience the employee is usually fined \$200-\$300 and their charge is reduced to a misdemeanor if there are no same or similar charges within one year.

Mr. Earl Cohen, Mansfield, Tanick & Cohen, representing Two Guys From Italy, and Daniel Sarno, Two Guys From Italy, 7495 France Avenue, appeared to appeal Administrative Citation Case No. 00-005039. Mr. Cohen introduced Ms. Sandra Merrill, the server in the aforementioned case. Mr. Cohen said that the basis of the appeal was legal because in his opinion Ms. Merrill had not served a minor. Ms. Merrill stated that on a very busy evening, the undercover decoy and a female officer stood at the bar and ordered drinks. She filled their order and when she turned toward them, the officer told her she had served a minor. Ms. Merrill said she had intended to card the customers, but had not had a chance. Mr. Cohen added that his client did not believe service had taken place and this was the basis for their appeal. Mr. Siitari read from the officer's report stating that Ms. Merrill served the drinks without asking for ID before she was shown the officers badge and the citation issued.

Mathew Maenkey, representing Eden Avenue Grill, stated that they did not have a legal argument. However, he noted the affidavits of Ken Johnson, proprietor of Eden Avenue Grill and Kevin Stotesberry, the server describing the night the citation was issued, and questioned the methodology of the undercover investigation. In addition, Mr. Maenkey stated that Mr. Johnson had concern about the viability of his establishment in light of receiving a second citation, because of the severity of potential future citations. Mr. Maenkey asked the Council to grant Eden Avenue Grill relief from the citation.

Kathy Iverson, Edina Chemical Health Advisor, 5410 York Avenue South, reminded the Council of the underage alcohol problem in Edina. She said the best deterrent to under age use of alcohol is swift and consistent penalties.

The Council discussed the appeals, the performance of Edina restaurants overall, and the severity of the administrative penalty matrix. Staff pointed out that the penalty matrix drops the citations after 24 months. Mayor Pro tem Kelly said he felt this was a difficult task. He had

supported full liquor service in Edina, with the provision that underage service not happen. He said in his opinion it should not be too difficult to card every patron. Mayor Pro tem Kelly said he also wanted to support the fine restaurants such as the appellants. Member Hovland added that he believed the Council must do three things. First the two appeals must be decided, then he said at a later time the administrative penalty matrix should be reviewed, and finally, standards should be established for future undercover operations. He added that he would favor reducing the fines. Member Faust reminded the Council how far Edina had come in the last few years. She said the public had given their trust to the Council to protect the health and welfare of all citizens. In her opinion, the penalties are not too severe. Member Faust asked Mr. Cohen if Two Guys From Italy intends to pursue this issue in court. Mr. Cohen responded that Ms. Merrill was facing criminal charges.

The Council discussed a variety of methods of relief and came to consensus that the fine would remain, but the length of the suspension would be reduced. **Motion of Member Hovland, seconded by Member Johnson to close the hearing.**

Ayes: Faust, Hovland, Johnson, Kelly
Motion carried.

Member Hovland made a motion upholding the \$1,000 fine, while reducing the three day suspension to a one day suspension to be served within the next thirty days, with the establishment choosing the day of the suspension for Administrative Penalty Case No. 00-005040, Two Guys From Italy. Member Faust seconded the motion.

Rollcall:
Ayes: Faust, Hovland, Johnson, Kelly
Motion carried.

Member Johnson made a motion upholding the \$1,000 fine, while reducing the three day suspension to a one day suspension to be served within the next thirty days, with the establishment choosing the day of the suspension for Administrative Penalty Case No. 00-005039, Eden Avenue Grill. Member Hovland seconded the motion.

Rollcall:
Ayes: Faust, Hovland, Johnson, Kelly
Motion carried.

***RECYCLING REPORT REGARDING CONTRACT VS. SUBSCRIPTION SERVICES RECEIVED Motion made by Member Johnson and seconded by Member Hovland acknowledging receipt of the recycling report regarding contract vs. subscription services.**

Motion carried on rollcall vote - five ayes.

HEARING DATE OF MAY 16, 2000, SET FOR REFERENDUM PROJECTS Following a brief discussion, **Member Hovland made a motion setting a public hearing for the proposed referendum project for Tuesday, May 16, 2000, at 5:00 p.m. in the Edina City Council Chambers.** Member Faust seconded the motion.

Ayes: Faust, Hovland, Johnson, Kelly
Motion carried.

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CLAIMS PAID Motion made by Member Johnson approving payment of the following claims as shown in detail on the Check Register dated April 26, 2000, and consisting of 32 pages: General Fund \$252,584.16; Communications \$1,205.33; Working Capital \$4,898.33; Art Center \$21,681.23; Golf Dome Fund \$2,025.88; Swimming Pool Fund \$15,444.97; Golf Course Fund \$128,684.43; Ice Arena Fund \$1,217.72; Edinborough/Centennial Lakes \$10,056.59; Utility Fund \$263,403.12; Storm Sewer Utility Fund \$125.53; Liquor Dispensary Fund \$197,384.62; Construction Fund \$11,128.63; TOTAL \$909,840.54; and for confirmation of payment of claims as shown in detail on the Check Register dated April 26, 2000, and consisting of 5 pages: General Fund \$328,410.43; Working Capital \$1,064.99; Art Center \$180.00; Swimming Pool Fund \$1,089.26; Golf Course Fund \$294.33; Edinborough/ Centennial Lakes \$545.30; Utility Fund \$1,542.24; Storm Sewer Utility Fund \$1,541.56; Liquor Dispensary Fund \$61,652.90; Construction Fund \$125,424.18; TOTAL \$521,745.19. Member Hovland seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Johnson, Kelly

Motion carried.

There being no further business on the Council Agenda, Mayor pro tem Kelly adjourned the Council Meeting at 9:20 P.M.

City Clerk